



MARYLAND LEAGUE
OF CONSERVATION VOTERS

December 18th, 2017

Gary Setzer,
Senior Advisor,
Maryland Department of the Environment
1800 Washington Boulevard, Baltimore, MD 21230
Gary.setzer@maryland.gov
Re: Comments on 26.08.11 Maryland Water Quality Trading Program draft
regulations.

Board of Directors

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Good evening Mr. Setzer and Maryland Department of the Environment,

Thank you for the opportunity to comment on the 26.08.11 Maryland Water Quality Trading Program draft regulations. My name is Ben Alexandro. I am the water policy advocate for the Maryland League of Conservation Voters, representing over 19,000 supporters and many more voters. I am also the Maryland State Lead for the Choose Clean Water Coalition, a coalition of over 200 mid-Atlantic nonprofits interested in water issues. I would like to take this opportunity to thank MDE for making some significant improvements to the previous draft of the regulations and urge you to fix the remaining issues provided by the environmental community in previous letters and voiced by many of our partners at the Water Quality Trading Advisory Committee meetings. I would also like to turn your attention to the Choose Clean Water Trading Principles we submitted as well as the letter submitted over the summer.

First, I commend MDE for making three significant improvements this fall to the previous draft. The biggest and most notable improvement is .08.E, 'Local Water Quality' section. It is incredibly important that local water quality is protected so that we do not overburden underserved communities and local waterways that are already impaired. Ensuring that credits used in an impaired waterbody must be generated locally or upstream is an essential step to ensure we are not creating hotspots. We should never forget underserved communities or communities of color that often live near impaired waters. We urge MDE to continue to strengthen protections against trading that could contribute to hot spots of pollution.

The second improvement is including a performance based benchmark of 3 parts per million of nitrogen. It is important that Maryland taxpayers' funds are used to get to the baseline, but not traded away as handouts in the trading program. However, MDE should ensure that this benchmark is clarified to apply only to the sewage treatment plants and does not accidentally allow for other industrial entities to use this language to generate paper credits. We also approve of the removal of dangerously hard to enforce 'bubble permits' from the trading scheme.

Finally, thank you for removing interstate trading. Maryland needs years of experience learning from trading within the state before it can hope to navigate the complexities of enforcing trades across state lines.

However, despite these improvements, there are still some significant improvements that are needed in this regulation to ensure a proper functioning trading market that improves water quality in an equitable way rather than degrades it. I will briefly touch on four areas that need improvement.

First is that the three trading regions, Potomac, Patuxent, and everything else in the Bay Watershed, are far too large. There should be more mechanisms in the regulations to keep trades within the same watershed when possible.

Second, under the 08.C.(1) uncertainty ratios, MDE should clarify the 2:1 uncertainty ratio to include all trades between point source and nonpoint source pollution. Maryland could use Virginia as a model in this regard which has established a 2:1 ratio for trades involving nonpoint sources.

Third, some of the uses of the reserve ratio under .08.C.(3) are worrying. .08.C.(3)(a) and .08.C.(3)(d) are reasonable uses; having a reserve in case of an act of God (out of human control) as well as holding a reserve to improve water quality are the only defensible uses for a reserve ratio in a robust trading scheme. However, .08.C.(3)(b) and .08.C.(3)(c) leave the door open for illegitimate uses and the vague language may allow bad actors to get a bailout by covering poorly maintained BMPs. The availability of credits should not be a factor in the reserve ratio. The credits should be retired whenever possible, and Maryland should have the goal of 5% of credits generated by point sources, and 10% of credits generated by nonpoint sources be retired.

Finally, and importantly, more work needs to be done to clarify and expand these regulations. MDE still can make progress in clarifying baselines to ensure that the trading adheres to the EPA Technical Memoranda and provides adequate transparency. MDE should provide additional detail on exactly how certification and verifying of credits will work as well as verifying not only the credits themselves, but also the verifiers.

When looking at these trading programs, we can learn a lot from the successes and failures of the trading programs outside Maryland. From our research and conversations with experts in Virginia, DC, and Pennsylvania, we found that detailed and specific regulations that are clear, transparent, verifiable and enforceable are very important to a functioning trading system that actually improves water quality. For example, Virginia has improved water quality in a verifiable way by allowing landowners to convert their lands into forests and forested wetlands. Other areas of the country have programs that ultimately amount to accounting exercises that do not improve water quality and in some cases could let polluters pollute more while staying in compliance. We need as strong regulations as possible to ensure that nutrient trading truly uses capitalistic market forces to equitably improve water quality as it was intended.

Thank you for your time.

Sincerely,

Ben Alexandro

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